

**STATE OF MICHIGAN  
EMPLOYMENT RELATIONS COMMISSION  
LABOR RELATIONS DIVISION**

In the Matter of:

HOLLAND BOARD OF PUBLIC WORKS,  
Public Employer,

-and-

Case No. UC03 H-32

SERVICE EMPLOYEES INTERNATIONAL  
UNION, LOCAL 517 M,  
Labor Organization-Petitioner.

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APPEARANCES:

Miller, Johnson, Snell & Cummiskey, P.L.C., by Michael A. Snapper, Esq., for the Public Employer

Terry Van Eyck, for the Petitioner

**DECISION AND ORDER DISMISSING  
UNIT CLARIFICATION PETITION**

Pursuant to Section 12 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.212, this case was heard in Detroit, Michigan, on May 21, 2004, by Roy L. Roulhac, Administrative Law Judge for the Michigan Employment Relations Commission. Based on the record, including briefs filed by the parties on or before July 12, 2004, the Commission finds as follows:

The Petition:

On August 4, 2003, Service Employees International Union, Local 517 M (Petitioner) filed a unit clarification petition to add to its bargaining unit the newly created position of broadband designer I/II. Petitioner maintains that the broadband designer shares a community of interest with other positions within its unit. The Employer argues that the broadband designer should be excluded from Petitioner's unit because it is a professional position, and the parties' collective bargaining agreement explicitly excludes professional employees.

Facts:

Petitioner and the Employer are parties to a collective bargaining agreement that covers the period April 1, 2002 to April 1, 2006. Pertinent parts of the agreement read:

The Board recognizes the Union as the exclusive representative of all non-supervisory, non-

professional, non-office clerical employees of the Holland Board of Public Works, excluding supervisors and all other employees, for the purpose of collective bargaining with respect to rates of pay, wages or salary, hours of work and other terms and conditions of employment.

Petitioner's unit includes engineering technician I and II, utility engineering aide, system operations technician, instrumentation technician, instrument and control technician operator, power resources mechanic A, plant operator and line operator. Three positions in the Union's bargaining unit require an associate's degree, while the others require only technical training, experience in the field of work, or a high school diploma. The pay range for employees in these positions is from \$11.77 to \$24.17 per hour or \$24,481.60 to \$50,273.60 per year.

In 2003, the Employer created a new classification, broadband designer I/II, and posted it as a nonunion, professional position. The broadband designer reports to the head of the Department of Technology and is responsible for performing, with minimal supervision, the most complex field engineering tasks in constructing, maintaining, and modifying fiber optic telecommunications systems, including inside and outside plant electronics. The broadband designer is required to have a bachelor's degree in electrical or telecommunications engineering technology or an equivalent degree, but candidates with an appropriate associate's degree and significant experience may also be considered, provided they actively pursue a bachelor's degree. Other employees in nonunion, professional classifications are also required to have advanced degrees and from one to seven years of experience.<sup>1</sup> Employees in these classifications are paid between \$26,000 and \$69,326 per year.

The Employer hired two employees to fill the newly created broadband designer I/II position in 2003. One, a new employee, has a bachelor's degree in electrical engineering. The other, a former utility engineering aide with fifteen years experience, was one of the three members of Petitioner's bargaining unit with an associate's degree. As a condition of his employment as a broadband designer I/II, the former utility engineering aide was required to actively pursue a bachelor's degree.

The job description for the utility engineering aide indicates that it is the highest level technical position with responsibility for performing, with minimal supervision, the most complex field engineering tasks in constructing, maintaining and altering electric distribution systems. The job duties of the utility engineering aide and the broadband designer are very similar, although the materials used (electric versus fiber optics), details, and record keeping are different. As a broadband designer, the former utility engineering aide is required to meet with prospective customers, analyze their needs, design a work order construction package, implement the construction using internal staff and outside contractors, manage the field and paperwork flow and perform electronic programming, documentation and record keeping.

#### Conclusions of Law:

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<sup>1</sup>Other excluded positions include: accounting system specialist, administration programmer/analyst, billing system specialist, civil engineer, cost analyst, cost and rates specialist, electrical communications engineer, electric distribution engineer, electric programmer/analyst, environmental/regulatory specialist, environmental safety specialist, fuels and resource specialist, GIS programmer/analyst, GIS specialist, information systems analyst, key account analyst/coordinator, power resources engineer and senior systems engineer.

Petitioner argues that the broadband designer I/II position is not a professional position. It contends that the broadband designer shares a community of interest with positions in its bargaining unit because, other than the fact that the broadband designer I/II works with fiber optics and the utility engineering aide works with electric distribution, their responsibilities are the same. Petitioner asserts that the need for a bachelor's degree is no reason to classify the broadband position as professional since an applicant with a bachelor's degree would not be turned down to work as a utility engineering aide.

It is undisputed that the parties' collective bargaining agreement excludes professional employees from Petitioner's bargaining unit. Although PERA does not contain a definition of a professional employee, we have generally applied that term to employees with specialized training who have advanced degrees or are actively in the process of obtaining an advanced degree. See our discussion of professional status in *Wayne Co*, 1984 MERC Lab Op 1027, 1039-1043. See also *Cass Co, Public Health Dep't*, 1989 MERC Lab Op 837, 839; *Hegira Programs, Inc*, 1984 MERC Lab Op 179, 196, fn 3. The record establishes that eighteen positions exist in the Employer's operations that are excluded from Petitioner's unit as professional employees. The position descriptions for these excluded positions, like the position description for the broadband designer, require the incumbents to have advanced degrees and substantial experience. In contrast, positions in Petitioner's bargaining unit are not required to have advanced degrees or specialized training. With the exception of three positions requiring an associate's degree, all positions within Petitioner's unit are only required to have technical training, experience in the field of work, or a high school diploma.

We do not find, as Petitioner urges, that because certain job responsibilities of the broadband designer and the utility engineering aide are similar, a community of interest exists with positions in its bargaining unit that warrants the placement of the broadband designer position in its unit. The fact that the broadband designer's duties are similar to the responsibilities of one position in Petitioner's bargaining unit is not sufficient to establish a community of interest with the other positions, given the significant differences in education and experience. See *Wayne-Westland Cmty Sch Dist*, 1976 MERC Lab Op 847, 853.

**ORDER DISMISSING PETITION**

Based upon the facts and conclusions of law set forth above, the unit clarification petition is dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Nora Lynch, Commission Chairman

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Harry W. Bishop, Commission Member

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Nino E. Green, Commission Member

Date: \_\_\_\_\_